

State of California

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**Legislative Change No.**

**09-01**

Bill Number: ABX3 15 Author: Krekorian Chapter Number: **09X3-10**

Laws Affecting Franchise Tax Board: Sections 6902.5, 17039.2, 17053.80, 17053.85, 19136.8, 23036.2, 23101, 23623, 23685, 25120, 25128.5, 25135, and 25136 of the Revenue and Taxation Code

Date Filed with the Secretary of State: February 20, 2009

**SUBJECT:** California Motion Picture Tax Credit/New Jobs Tax Credit/Economic Nexus/Define Sales/Sales Only Formula/Modify Rules For Assigning Certain Receipts

**Assembly Bill X3 15 (Krekorian), as enacted on February 20, 2009, made the following changes to laws impacting the Franchise Tax Board (FTB):**

Section 6902.5 of the Revenue and Taxation Code is added.

This act adds provisions to the Sales and Use Tax Law that will not be discussed because these provisions do not impact the department or state income tax revenue except for the following:

- A qualified taxpayer may, in lieu of claiming the credit allowed by this act, make an irrevocable election to apply the credit amount against qualified sales and use taxes imposed on the qualified taxpayer.
- The Board of Equalization is required to provide an annual listing to the FTB of qualified taxpayers or affiliates that have made an irrevocable election to apply the assigned credit against qualified sales and use taxes including the amount of the credit.

Section 17039.2 of the Revenue and Taxation Code is amended.

This provision of the act was chaptered out by SBX3 15 (Stats.2009, Ch. 09X3-17).

This act excludes the new job hiring credit enacted under Revenue and Taxation Code section 17053.80 from the limitation on business credits that limit the use of business credits to 50% of the net tax amount on returns filed for tax years beginning on or after January 1, 2008, and before January 1, 2010.

This act is effective immediately upon enactment and is operative for taxable years beginning on or after January 1, 2009.

This act will not require any reports by the department to the Legislature.

Assistant Bureau Director  
Patrice Gau-Johnson

Date  
03/20/09

Section 17053.80 of the Revenue and Taxation Code is added.

This act provides for taxable years beginning on or after January 1, 2009, a credit against tax for a qualified employer in the amount of \$3,000 for each increase in a qualified full-time employee hired by a qualified employer in the taxable year, determined on an annual full-time equivalent basis. Any credits not used in the taxable year may be carried forward up to eight years.

This act provides definitions for terms such as “acquired”, “qualified full-time employee”, “qualified employer”, “qualified wages”, and “annual full-time equivalent”.

The act specifies that any deductions an employer is allowed for qualified wages is reduced by the amount of the credit.

Taxpayers may only claim the credit on an original timely filed return received by the FTB on or before a cut-off date specified by FTB, which is the last day of the calendar quarter within which FTB estimates it will have received timely filed original returns claiming the credit that cumulatively total \$400 million for all taxable years. The date received on a return is determined by FTB.

The act provides that determinations made by FTB with respect to the cut-off date, the date a return is received, and whether a return has been timely filed may not be reviewed in any administrative or judicial proceeding.

The act provides that any disallowance of the credit due to the cumulative total of the credit being reached is treated as a math error and is not subject to review in any administrative or judicial proceeding.

The act requires FTB to provide periodic notice on its website of the amount of the credit claimed on timely filed original returns and authorizes FTB to prescribe rules, guidelines, or procedures necessary to carry out its provisions. The act provides that any rules, guidelines, or procedures established are exempt from the Administrative Procedures Act.

This act is effective immediately upon enactment, and by its own terms, is operative for taxable years beginning on or after January 1, 2009. The act will be repealed on December 1 of the year after the year in which the allowable credit limit is reached.

This act will not require any reports by the department to the Legislature.

Section 17053.85 of the Revenue and Taxation Code is added.

This act creates a income tax credit to a qualified taxpayer for 20% of qualified expenditures attributable to the production of a qualified motion picture and 25% of qualified expenditures attributable to the production of a qualified motion picture, where the motion picture is a television series relocated to California or an independent film, in California that is allocated and certified by the California Film Commission (CFC). Annually, the CFC is required to provide the FTB with a list of qualified taxpayers and the tax credit amounts allocated to each qualified taxpayer by the CFC.

Any credit unused in a taxable year because it is in excess of the taxpayer's tax liability can be carried over for six taxable years.

This act provides that the aggregate amount of credits that may be allocated by the CFC in any fiscal year is equal to the following:

- \$100 million in credits for the 2009/2010 fiscal year and each fiscal year thereafter, through and including the 2013/2014 fiscal year.
- The unused allocation credit amount, if any, for the preceding fiscal year.
- The amount of previously allocated credit not certified.

For credits attributable to an independent film, the qualified taxpayer is permitted to sell a credit to an unrelated party.

As a tax levy, this provision of the act is effective immediately upon enactment and specifically operative as follows:

- Tax credits are allowed for taxable years beginning on or after January 1, 2011, in which the CFC issues a credit certificate.
- Tax credits are allocated by the CFC beginning on or after July 1, 2009, and before July 1, 2014.
- Tax credits are for the applicable percentage of all qualified expenditures paid or incurred in all taxable years for the qualified motion picture.

This provision of the act will not require any reports by the department to the Legislature.

Section 19136.8 of the Revenue and Taxation Code is added.

This act provides that a penalty for the underpayment of estimated tax or underpayment of tax is not made if the underpayment was created or increased by the disallowance of the credit under Revenue and Taxation Code section 17053.80 or 23623 because the \$400 million limit had been exceeded.

This act is effective immediately upon enactment and operative for taxable years beginning on or after January 1, 2009.

This act will not require any reports by the department to the Legislature.

Section 23036.2 of the Revenue and Taxation Code is amended.

This provision of the act was chaptered out by SBX3 15 (Stats.2009, Ch. 09X3-17).

This act excludes the new job hiring credit enacted under Revenue and Taxation Code section 23623 from the limitation on business credits that limit the use of business credits to 50% of the net tax amount on returns filed for tax years beginning on or after January 1, 2008, and before January 1, 2010.

This act is effective immediately upon enactment and operative for taxable years beginning on or after January 1, 2009.

This act will not require any reports by the department to the Legislature.

Section 23101 of the Revenue and Taxation Code is amended.

This provision of the act was chaptered out by SBX3 15 (Stats.2009, Ch. 09X3-17).

This act establishes a bright-line test and provides that a taxpayer is doing business in California if any of the following conditions are satisfied:

1. The taxpayer is organized or commercially domiciled in this state.
2. Sales of the taxpayer in this state exceed the lesser of \$500,000 or 25% of the taxpayer's total sales. Sales of the taxpayer include sales by an agent or independent contractor of the taxpayer.
3. The real and tangible personal property of the taxpayer in this state exceed the lesser of \$50,000 or 25% of the taxpayer's total real and tangible personal property.
4. The amount paid in this state by the taxpayer for compensation exceeds the lesser of \$50,000 or 25% of the total compensation paid by the taxpayer.

This act requires the FTB to revise the amounts described in items 2, 3, and 4 above on an annual basis in a similar manner used to recompute the state income tax brackets.

This act provides that the sales, property, and payroll of the taxpayer include the taxpayer's pro rata or distributive share of pass-through entities. This provision defines "pass-through entities" as a partnership or an "S" corporation.

As a tax levy, this provision of the act is effective immediately upon enactment and specifically operative for taxable years beginning on or after January 1, 2011.

This provision of the act will not require any reports by the department to the Legislature.

Section 23623 of the Revenue and Taxation Code is added.

This act provides for taxable years beginning on or after January 1, 2009, a credit against tax for a qualified employer in the amount of \$3,000 for each increase in a qualified full-time employee hired by a qualified employer in the taxable year, determined on an annual full-time equivalent basis. Any credits not used in the taxable year may be carried forward up to eight years.

This act provides definitions for the terms such as “acquired”, “qualified full-time employee” “qualified employer”, “qualified wages”, and “annual full-time equivalent”.

This act specifies that any deductions an employer is allowed for qualified wages is reduced by the amount of the credit.

This act provides that taxpayers may only claim the credit on an original timely filed return received by FTB on or before a cut-off date specified by FTB, which is the last day of the calendar quarter within which FTB estimates it will have received timely filed original returns claiming the credit that cumulatively total \$400 million for all taxable years. The date received on a return is determined by FTB.

This act provides that determinations made by FTB with respect to the cut-off date, the date a return is received, and whether a return has been timely filed may not be reviewed in any administrative or judicial proceeding.

This act provides that any disallowance of the credit due to the cumulative total of the credit being reached is treated as a math error and is not subject to review in any administrative or judicial proceeding.

This act requires FTB to provide periodic notice on its website of the amount of the credit claimed on timely filed original returns and authorizes FTB to prescribe rules, guidelines, or procedures necessary to carry out its provisions. The act provides that any rules, guidelines or procedures established are exempt from the Administrative Procedures Act.

This act is effective immediately upon enactment, and by its own terms is operative for taxable years beginning on or after January 1, 2009. The act will be repealed on December 1 of the year after the year in which the allowable credit limit is reached.

This act will not require any reports by the department to the Legislature.

Section 23685 of the Revenue and Taxation Code is added.

This act creates a franchise or income tax credit to a qualified taxpayer for 20% of qualified expenditures attributable to the production of a qualified motion picture and 25% of qualified expenditures attributable to the production of a qualified motion picture, where the motion picture is a television series relocated to California or an independent film, in California that is allocated and certified by the CFC. Annually, the CFC is required to provide the FTB with a list of qualified taxpayers and the tax credit amounts allocated to each qualified taxpayer by the CFC.

Any credit unused in a taxable year because it is in excess of the taxpayer’s tax liability can be carried over for six taxable years.

This act provides that the aggregate amount of credits that may be allocated by the CFC in any fiscal year is equal to the following:

- \$100 million in credits for the 2009/2010 fiscal year and each fiscal year thereafter, through and including the 2013/2014 fiscal year.
- The unused allocation credit amount, if any, for the preceding fiscal year.
- The amount of previously allocated credit not certified.

For credits attributable to an independent film, the qualified taxpayer is permitted to sell a credit to an unrelated party.

As a tax levy, this provision of the act is effective immediately upon enactment and specifically operative as follows:

- Tax credits are allowed for taxable years beginning on or after January 1, 2011, in which the CFC issues a credit certificate.
- Tax credits are allocated by the CFC beginning on or after July 1, 2009, and before July 1, 2014.
- Tax credits are for the applicable percentage of all qualified expenditures paid or incurred in all taxable years for the qualified motion picture.

This provision of the act will not require any reports by the department to the Legislature.

Section 25120 of the Revenue and Taxation Code is amended.

This provision of the act was chaptered out by SBX3 15 (Stats.2009, Ch. 09X3-17).

This act defines gross receipts as the gross amounts realized (the sum of money and the fair market value of other property or services received), but shall not include the following items:

- Repayment, maturity, or redemption of the principal of a loan, bond, mutual fund, certificate of deposit, or similar marketable instrument.
- The principal amount received under a repurchase agreement or other transaction properly characterized as a loan.
- Proceeds from issuance of the taxpayer's own stock or from sale of treasury stock.
- Damages and other amounts received as the result of litigation.
- Property acquired by an agent on behalf of another.
- Tax refunds and other tax benefit recoveries.
- Pension reversions.
- Contributions to capital (except for sales of securities by securities dealers).
- Income from discharge of indebtedness.
- Amounts realized from exchanges of inventory that are not recognized under the Internal Revenue Code.
- Amounts received from transactions in intangible assets held in connection with a treasury function of the taxpayer's unitary business and the gross receipts and overall net gains from the maturity, redemption, sale, exchange, or other disposition of those intangible assets.
- Amounts received from hedging transactions involving intangible assets.

As a tax levy, this provision of the act is effective immediately upon enactment and specifically operative for taxable years beginning on or after January 1, 2011.

This provision of the act will not require any reports by the department to the Legislature.

Section 25128.5 of the Revenue and Taxation Code is added.

This act applies to Corporation Tax Law (CTL) and allows certain apportioning trades or businesses to make an annual, irrevocable election on a timely filed original return to utilize a single factor, 100% sales apportionment formula instead of the three factor, double-weighted sales apportionment formula. Apportioning trades or businesses that derive more than 50% of their gross business receipts from conducting one or more qualified business activities (agricultural, extractive, savings and loan, and banking or financial business) are specifically prohibited from electing a single factor, 100% sales apportionment formula.

As a tax levy, this provision of the act is effective immediately upon enactment and specifically operative for taxable years beginning on or after January 1, 2011.

This provision of the act will not require any reports by the department to the Legislature.

Section 25135 of the Revenue and Taxation Code is amended.

This provision of the act was chaptered out by SBX3 15 (Stats.2009, Ch. 09X3-17).

This act modifies the following rules for assigning sales from tangible personal property to the sales factor by adding an additional test to the rules.

- Sales of tangible personal property are assigned to California if the product is delivered or shipped to a purchaser in this state, and the taxpayer (seller) or any member of the combined reporting group is taxable in this state.
- Sales of tangible personal property are assigned to California if the product is delivered or shipped to a purchaser out of state, and the taxpayer (seller) or any member of the combined reporting group is not taxable in the state of destination.

In addition, this provision of the act provides that FTB may prescribe legislative rules and regulations to carryout the purposes of this provision.

As a tax levy, this provision of the act is effective immediately upon enactment and specifically operative for taxable years beginning on or after January 1, 2011.

This provision of the act will not require any reports by the department to the Legislature.

Section 25136 of the Revenue and Taxation Code is amended.

This provision of the act was chaptered out by SBX3 15 (Stats.2009, Ch. 09X3-17).

This act provides the following rules for assigning sales of other than tangible personal property:

- Sales from services are in this state to the extent the purchaser of the service received the benefit of the service in this state.
- Sales from intangible property are in this state to the extent the property is used in this state. In the case of marketable securities, sales are in this state if the customer is in this state.
- Sales from the sale, lease, rental, or licensing of real property are in this state if the real property is located in this state.
- Sales from the rental, lease, or licensing of tangible personal property are in this state if the property is located in this state.

In addition, this provision of the act provides that FTB may prescribe legislative rules and regulations to carryout the purposes of this provision.

As a tax levy, this provision of the act is effective immediately upon enactment and specifically operative for taxable years beginning on or after January 1, 2011.

This provision of the act will not require any reports by the department to the Legislature.